

November 8, 2004

Ms. Jennifer Johnson
Secretary of the Board
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1210

Dear Ms. Johnson

Navy Federal Credit Union provides the following comments in response to the Federal Reserve Board's (Board) request for comment on proposed changes to Regulation E. Navy Federal is the nation's largest natural person credit union with over \$20 billion in assets and 2.4 million members.

Payroll Card Accounts

The Board requests comments on subjecting payroll card accounts to Regulation E. The Board proposes to accomplish this by adding the following language to the existing definition of the term "account" in the regulation:

"the term includes a 'payroll card account' directly or indirectly established by an employer on behalf of a consumer to which electronic fund transfers of the consumer's wages, salary, or other employee compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, or a depository institution."

Navy Federal strongly opposes amending the definition of "account" to reflect payroll card accounts and urges the Board to withhold this language from the text of the regulation. We believe this language is simply a clarification to the existing definition of "account" and would be more appropriately placed in the Official Staff Commentary. However, we do not support inclusion of the clause "...whether the account is operated or managed by the employer, a third-party payroll processor, or a depository institution." The Electronic Fund Transfer Act clearly applies only to accounts owned by consumers for personal, family, or household purposes. We believe that this clause, specifically the words "operated or managed," could be interpreted to mean that someone other than the consumer controls or owns the account. We believe this would be contrary to the explicit purpose of the Electronic Fund Transfer Act and strongly encourage the Board to remove this language.

Navy Federal is also concerned that a proposal such as this to subject payroll card accounts to Regulation E could trigger widespread confusion among consumers and financial institutions about applicability and coverage under Federal Deposit Insurance Corporation (FDIC) rules, Truth in Savings rules, and Regulation D. We believe it is essential that regulations addressing the accounts underlying one or more types of stored value cards be compatible with other applicable regulations associated with consumer asset accounts. Consequently, for financial institutions to submit informed comments in response to the current Regulation E proposal, federal regulators must also address deposit/share insurance coverage, Truth in Savings rules, Regulation D reserve requirements, and state law issues. If the Board chooses to pursue future proposed rulemakings on the accounts underlying stored value cards, Navy Federal strongly urges the Board to work with the other federal financial institution regulators to develop comprehensive proposals that would address all of these regulatory issues. Otherwise, we believe regulations governing the accounts underlying stored value cards will emerge in a piecemeal fashion without regard for the impact one regulatory change may have on applicability under other regulations and statutes.

The Board specifically requests comment on whether any future FDIC final ruling on insurance coverage for certain types of accounts underlying stored value cards should automatically subject those particular types of account to Regulation E. Navy Federal does not believe that an individual FDIC ruling should automatically require changes in Regulation E. Again, we encourage the federal regulatory agencies to work together and propose a comprehensive approach to the accounts underlying stored value cards.

Electronic Check Transactions – Financial Institution Disclosures

Navy Federal supports the Board's proposal to require financial institutions to list electronic check (ECK) transactions as a separate type of transfer in their initial Regulation E disclosures. We believe that many financial institutions added this language to their initial disclosures when the Board amended the Regulation E Commentary in 2001, and, consequently, adding this requirement to the regulation now would not impose an additional burden. Further, we believe it is appropriate for financial institutions to clarify in their initial disclosures that ECK transactions may occur on their accounts.

Navy Federal, however, strongly opposes the Board's proposal to require financial institutions to amend the error resolution sections of their initial Regulation E disclosures to specifically instruct consumers to notify them if unauthorized electronic fund transfers occur using information from the consumers' checks. We believe that specifically listing ECK transactions as a type of electronic fund transfer in the initial disclosure is sufficient for consumers to understand that the error resolution section of that same disclosure also applies to ECK transactions. We believe such a requirement would impose unnecessary regulatory burden on financial institutions and strongly encourage the Board to eliminate the proposed requirement.

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If the Board chooses to retain this requirement in the final rule, we urge it to allow 12 months for financial institutions to comply with the change.

Electronic Check Transactions – Merchant Requirements

The Board is proposing to subject merchants and other payees to Regulation E for purposes of initiating ECK transactions. Navy Federal supports extending Regulation E to merchants/other payees initiating these types of transactions. We believe that the extension of Regulation E to these payees will allow the Board or other appropriate regulatory agencies to take prudent action to enforce compliance with Regulation E as necessary. Similarly, the Board is requesting comments on requiring merchants/other payees to obtain consumers' written, signed authorizations prior to initiating ECK transactions at the point-of-sale. We believe that the Board should not include this requirement in Regulation E and believe instead that the *NACHA Rules*, which currently require written authorization at the point-of-sale, are sufficient.

If the Board chooses to add the requirement to Regulation E for consumers to provide a written, signed authorization for ECK transactions at the point-of-sale, we urge the Board to clarify that this requirement would only apply in situations where the merchant returns the voided check to the consumer. Such a signature requirement should not be imposed on point-of-sale transactions where the merchant retains the check, which is one type of scenario currently under consideration at NACHA to facilitate merchants' back office processes. Further, we encourage the Board to clarify whether a merchant should obtain a written, signed authorization if it has posted a sign, according to the provisions of this proposal, allowing the consumer to authorize either an ECK transaction or a check transaction.

In proposed Section 205.3(b)(2)(iii), the Board is proposing three new disclosure requirements for merchants/other payees that initiate ECK transactions. First, the Board is proposing to require merchants/other payees initiating ECK transactions to disclose that the consumer authorizes the payee to charge a fee if there are insufficient funds in the consumer's account and may collect the fee as an electronic fund transfer. We support this disclosure and believe it is important for consumers to specifically authorize this transfer.

Second, the Board is proposing to require merchants/other payees to disclose that ECK transactions may cause the underlying funds to be debited quickly from the consumer's account. We believe that consumers are already aware that using their checks to initiate electronic fund transfers may cause the funds to be debited quickly from their account. A requirement for merchants/other payees to explicitly disclose this is unnecessary, especially considering that checks may clear as fast or faster than ECK transactions in light of Check 21. We encourage the Board to remove this requirement from the final rule.

Third, the Board is proposing to require merchants/other payees to disclose to consumers that their paid checks will not be returned by their financial institutions in Accounts Receivable (ARC) transactions. Again, we believe this disclosure is unnecessary and could even be misleading to consumers. Many financial institutions do not return paid checks to their account holders. However, a disclosure such as this on a consumer's utility bill, for example, may falsely lead consumers to believe that their non-ARC items may be returned to them by their financial institutions. We believe consumer education about whether paid checks are returned is best left to a financial institution's discretion, so the institution can tailor information about returning paid checks to its business practices. Therefore, we encourage the Board to remove this disclosure requirement from the final rule.

We support the Board's proposal to allow a merchant/other payee to obtain a consumer's authorization that would allow it to process the consumer's check as either a source document for an ECK transaction or as a check transaction. We believe that such an authorization would facilitate a payee's best use of its existing resources and would not harm consumers. On a related note, the Board also requests comment on whether payees should be required to explain under what circumstances they would not process a check as an ECK transaction. We believe that this decision would be based on the operation of the payee's front-line and back-office processes. An explanation of the efficient use of these resources may be quite detailed and, consequently, may not be conducive to a consumer notice at the point-of-sale or on a bill. Therefore, we encourage the Board to make optional the disclosure of the specific circumstances under which a merchant would not process a check as an ECK transaction.

For ARC transactions, the Board proposes to allow payees to obtain a single authorization to convert multiple checks submitted as payment after receiving an invoice or during a single billing cycle. Navy Federal supports this change. We believe it provides sufficient notice to the consumer holding the account and will facilitate payees' check processing. Navy Federal, however, encourages the Board to clarify that the authorization applies even after the bill or invoice has been paid "in full." For example, a consumer may receive a credit card bill with a required minimum payment. The consumer may submit a check to pay "in full" the minimum payment and later (prior to the next bill) submit a check to pay an additional amount against the outstanding credit balance. We encourage the Board to clarify that the single authorization would be valid for any checks received prior to the next bill.

Authorization Requirements for Recurring Debits

Currently, Regulation E Section 205.10(b) requires a consumer's written authorization for any preauthorized electronic fund transfers from the consumer's account. Comment 10(b)-3 clarifies that a tape recording of a telephone conversation during which a consumer agrees to recurring debits does not constitute a written authorization. The Board is proposing to withdraw this comment in light of the passage of the E-SIGN Act. Navy Federal supports the withdrawal

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of Comment 10(b)-3 with limitations. We fear that allowing verbal, tape-recorded authorizations for all recurring debits from consumer accounts could substantially increase deceptive telemarketing practices and further expose consumers to fraud, which would likely result in financial institutions receiving an increased number of member concerns and stop payments requests. Therefore, we encourage the Board to limit use of verbal, tape-recorded consumer authorizations for recurring debits to situations where the caller and the consumer have an existing relationship or situations where the consumer initiates the call.

Debit Card PIN-Use Fee Disclosures

Earlier this year, the Board requested comment on the adequacy of the current disclosure requirements for debit card PIN-use fees. Navy Federal continues to believe that the existing disclosure requirements set forth in Regulation E are sufficient to inform consumers about debit card PIN-use fees at the point-of-sale. Currently, card-issuing financial institutions must disclose these fees as separate line items in their initial account disclosures and in the aggregate with other fees on consumers' periodic account statements. We believe that this existing disclosure framework adequately informs the consumer of the fee both prior to use of the debit card in the initial account disclosures and after he/she uses the card (and potentially incurs a PIN-use fee) in the periodic account statement. We encourage the Board to withdraw any proposed amendments to Regulation E that would increase the disclosure requirements for PIN-use fees.

Navy Federal appreciates the opportunity to comment on the Board's proposed changes to Regulation E.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian L. McDonnell", is written over a light gray rectangular background.

Brian L. McDonnell
President/CEO

BLM/slb